

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

DATA SYSTEMS INTERNATIONAL,)	
INC.,)	
)	
Plaintiff,)	
)	Case No. 4:21-00339-CV-RK
v.)	
)	
31-W INSULATION CO. INC.,)	
)	
Defendant.)	

ORDER

Before the Court are documents submitted for in camera review by Defendant 31-W Insulation Co., Inc. following a discovery dispute teleconference held May 10, 2022. (Doc. 44.) Plaintiff Data Systems International, Inc. asserts (1) documents responsive to its document subpoena issued to Layton Welborn, an employee of Defendant and a non-retained expert for Defendant, are being improperly withheld; and (2) documents responsive to its document subpoena issued to Ryan Lunka, a retained, testifying expert for Defendant, are being improperly withheld. Following the discovery dispute teleconference, the Court ordered Defendant to submit for in camera review the documents sought in the document subpoenas that Defendant asserts are protected by attorney-client privilege or as work product. (Doc. 44.)

Pursuant to Rule 26(b)(4)(C):

(C) Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses. Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

- (i) relate to compensation for the expert's study or testimony;
- (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

Having reviewed the submitted documents, the Court finds all submitted documents except the following are protected by attorney-client privilege or as work product: LUNKA IN-CAMERA REVIEW_0773.pdf through LUNKA IN-CAMERA REVIEW_0777.pdf, which

identify facts and/or assumptions that counsel provided and that Lunka considered in forming the opinions in his report. Defendant has not articulated why these documents are protected and do not fall under the exception of Rule 26(b)(4)(C)(ii) or (iii).

Accordingly, the Court **ORDERS** as follows:

- (1) Defendant's objection to the disclosure of the above-described documents is **OVERRULED**, and the production of said documents to Plaintiff is **ORDERED** to occur on or before June 13, 2022; and
- (2) Defendant's objection to Plaintiff's request for the remaining submitted documents is **SUSTAINED**.

IT IS SO ORDERED.

s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: June 6, 2022